IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7057 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODCHANDRA NATWARLAL VYAS

Versus

GUJARAT STATE ROAD AND TRANSPORT CORP.

Appearance:

1. Special Civil Application No. 7057 of 2002

MR AY KOGJE for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/01/2003

ORAL JUDGEMENT

1. RULE. The learned counsel for the respondent waives service of rule on behalf of the respondent.

2. This petition has been filed for quashing and setting aside the high handed action of the respondent Corporation in breaking open the lock of the petitioner's premises and forcibly throwing out all the belongings of the petitioner and quashing and setting aside the notice/ order dated 29.07.2002 of the respondent - Corporation asking the petitioner to vacate the premises and for a direction to restrain the respondent from vacating the petitioner from the premises without following due procedure of law and permit the petitioner to continue his business activities on the said premises as if the impugned notice/order was not passed.

3. The brief facts of the case are that the petitioner was an occupier of a canteen of the respondent - Corporation at S.T. Bus Stand, Dabhoi under the deed of license. The petitioner was in occupation of the said premises since last 40 years under the deed of license executed for different period at the different point of time. On 18.10.2001, the respondent addressed a letter to the petitioner stating that as the period of license was to expire on 31.05.2002 the tenders are to be issued for selecting the new licensee. Pursuant to this, the petitioner submitted his tender on 26.11.2001. As no decision was taken on the tenders by the respondents and as the terms of the petitioner's license was to over hence, the petitioner filed a Regular Civil Suit No.478 of 2002 in the Court of Civil Judge (S.D.) at Vadodara and also filed an application Exh.5 for temporary injunction. It is stated by the learned counsel for the petitioner that initially ad-interim injunction order was granted in favour of the petitioner. In the said suit both the parties had arrived at a compromise and filed a purshis dated 31.05.2002 before the Civil Judge (S.D.) at Vadodara. The purshis says that it is jointly declared by the parties hereto that because the Public Premises (EVO) Act is applicable, the defendants confirm that they shall not remove the plaintiff forcibly from the possession of the suit premises. That the plaintiff, therefore, only agrees that process of tender yet not completed, he shall offer to pay the highest amount in the process of tender and subject to above the plaintiff's possession of the suit premises can be and is to be continued accordingly. It is further stated by the learned counsel for the petitioner that on the basis of the said purshis Regular Civil Suit No.478 of 2002 was withdrawn by the plaintiff - petitioner. On the basis of the said purshis the petitioner was under the impression that he will not be evicted from the premises without following the procedure provided under the provision of Public Premises (Eviction of Unauthorized Occupants) Act,

1971 as the petitioner's contract expired on 31.07.2002. Hence, on 31.07.2002 the possession of the premises was taken over by the Corporation after preparing a panchnama on the spot and the petitioner was evicted on 31.07.2002 illegally and forcibly. It is also stated that the tender procedure to which the petitioner was also one of the participants has not been finalized and is incomplete and in violation of the purshis filed by both the parties. The petitioner is ready and willing to abide by the conditions of the license as well as the condition stipulated under the purshis and, therefore, there was no cause for the respondent to issue notice dated 29.07.2002 asking him to evict the premises as the tender process was incomplete and not finalized.

4. The affidavit-in-reply on behalf of the respondent - Corporation has also been filed wherein it is stated that disputed canteen at Dabhoi depot was given to the father of the petitioner in the year 1979 as at the relevant point of time the father of the petitioner was the highest offerer in the tender proceedings and at that time the license fee was Rs.1,500/= only. The said statutory period of license came to be over in the year 1991. Thereafter, in the year 1991, fresh tenders were invited and the father of the petitioner again being the highest offerer, the said contract was given to him. The renewal of the license of the petitioner came to be over on 31.05.2002. The original license holder had passed away on 02.03.1998 and on the application of the petitioner, he was permitted to run the canteen premises on the same conditions on which the father of the petitioner was given license. 31.05.2002, being the last date on which the statutory period of license was to come to be over, the corporation sent a notice prior to that date. The said notice was issued on 18.10.2001, which was duly served on the petitioner intimating the fact that the period of license is being over on 31.05.2002. A Civil Suit was filed by the petitioner in the Civil Court, Vadodara. In the proceedings of the said suit a purshis was filed by the parties and it was understood between the parties that the tender which was issued in the month of October 2001 was opened on 26.11.2001 and in pursuance to that it was agreed that if the petitioner was willing to pay Rs.21,000/=, as per the highest offer received by the Corporation in the tender proceedings, the petitioner will be permitted to continue to run the said canteen and further decision will depend upon negotiations made between the parties viz. the petitioner and the third person who quoted Rs.21,000/= as license fee. The petitioner was called by the competent authority of the Corporation and the petitioner filed

reply on 26.06.2002. The petitioner was also called before the Sub Committee at Central Office, Ahmedabad. The petitioner as well as the third party who quoted highest amount of license fee remained present before the Committee on 16.07.2002. During the course of negotiations, the petitioner has not shown his willingness to pay more than Rs.8,500/=, and it was also pointed out by him that he is not agreed to pay any amount more than Rs.8,500/=. It is also stated that as per the purshis filed before the Civil Court, Vadodara the petitioner has complied with and paid the amount of license fee of Rs.21,000/- on 15.06.2002 and on 17.07.2002 respectively for one month and no proceedings were initiated upto 31.07.2002. As thereafter he was not ready to pay more than Rs.8,500/=, the possession of the canteen was taken on 31.07.2002 after preparing a panchnama. All the articles of the petitioner are lying with the Corporation and thereafter notice was issued to the petitioner to collect his articles. As the petitioner has left the premises the other material viz. some amount which was also found there was also duly collected by preparing a panchnama in the presence of witnesses. The respondent said in his reply that the action initiated by the Corporation is just proper and legal. The conduct of the petitioner is not proper by suppressing the material facts and the interim order obtained by the petitioner passed by this Court deserves to be quashed and set aside. It is also stated that the Corporation being a statutory body it is imperative that the license fee is duly received by the Corporation, then the Corporation has no grievance against the petitioner but it appears that the petitioner wants to continue in the said premises by paying old license fee and his only intention is to see that no other person should be allowed to run the canteen, except the present petitioner.

5. Heard the learned counsel for the parties and perused relevant papers on record.

6. The learned counsel for the petitioner pointed out the statements made in the purshis dated 31.05.2002 filed before the Civil Judge (S.D.), Vadodara in Regular Civil Suit No.478 of 2002, which read as under:

> " It is jointly declared by the parties hereto that because the public premises (EVO) Act is applicable the defendants confirm that they shall not remove the plaintiff forcibly from the possession of suit premises. That plaintiff therefore, only, agrees that process of tender

yet not completed, he shall offer to pay highest amount in the process of tender and subject to above plaintiff's possession of suit premises can be and is to be continued accordingly. "

7. On the basis of this purshis, the contention of the learned counsel for the petitioner is that the petitioner was permitted to continue in possession unless the tender proceedings are over and the proceedings for eviction were not taken against the petitioner under the provision of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, but the petitioner was forcibly evicted on 31.07.2002 without taking any proceedings under the Act which is illegal and not sustainable in the eye of law. It is also contended by the petitioner that the petitioner has also offered Rs.21,000/= as license fee though as earlier pointed out he was ready to pay only old license fee of Rs.8,500/= but when the meeting of the Sub Committee was held on 16.07.2002 he was also ready to pay Rs.21,000/= and a memo was prepared and the memo was signed by the petitioner and it appears from this document that the amount of Rs.21,000/= was scored off and Rs.8,500/= was mentioned. It is also pointed out on behalf of the petitioner that the petitioner has paid the amount of Rs.21,000/= on 15.06.2002 and on 17.07.2002. If he did not intend to continue his business he would not have continued to deposit the said amounts on 15.06.2002 and 17.07.2002. As such, the petitioner has already agreed to pay Rs.21,000/= but the respondent has not accepted his bid and the Corporation was intending to give the contract to third party and hence his contract was terminated and he was thrown out on 31.07.2002 forcibly. It is also stated that the petitioner is still ready to pay Rs.21,000/= as license fee p.m. and on the basis of that amount of license fee, he may be permitted to continue his business and the Corporation be directed to handover the possession of the canteen premises. While on the other hand the learned counsel for the respondent contended that the affidavit-in-reply was filed in this Court on 19.08.2002 the petitioner ought to have taken stand before this Court that the petitioner is still ready to accept the terms and conditions of the tender and ready to pay the license fee of Rs.21,000/=. Had this plea been taken by the petitioner at the earliest the Corporation would have no objection in granting the license to the petitioner. Thus, the canteen is closed from 31.07.2002, the Corporation is suffering from financial loss of Rs.21,000/= p.m. and the passengers are also facing inconvenience due to the non-availability of the canteen on that depot.

8. I have given anxious thought to the contentions of the learned counsel for the parties. From the joint purshis filed in Regular Civil Suit No.478 of 2002 (Annexure 'C' to the petition) it appears that the petitioner was under the impression that he will be evicted only after initiating proceedings under the provisions of Public Premises (Eviction and Unauthorized Occupants) Act, 1971 and without proceedings he will not be evicted from the premises and he was required to pay Rs.21,000/= p.m. for which he was ready and continued to pay in the month of June and July also. From the memo prepared by the Committee on 16.07.2002, it appears that some manipulation was done and the amount of Rs.21,000/= was scored off and Rs.8,500/= was mentioned. From this document, it is clear that the petitioner was ready to pay license fee of Rs.21,000/= p.m.

9. Considering the facts and circumstances, I am of the view that both the parties i.e. respondent as well as the petitioner were at fault. Some illegalities have been committed by the Corporation itself in throwing out the petitioner without initiating proceedings under the provisions of Public Premies (Eviction and Unauthorized Occupants) Act, 1971 as per purshis filed in Civil Suit and some manipulation in the memo prepared by the Committee of the Corporation on 16.07.2002 was committed by the respondent by scoring off the figure Rs.21,000/= and mentioning Rs.8,500/= without initialled by any official. The petitioner is also at fault in as much as after receiving copy of the affidavit-in-reply on 19.08.2002, he could have stated before this Court that he is ready to pay the license fee of Rs.21,000/= p.m. and he should have made prayer before this Court for the directions to the Corporation to release the property in his favour on the regular payment of license fee of Rs.21,000/= p.m. but he has not done so. The learned counsel for the petitioner after consulting the petitioner who is present in the Court makes a statement that the petitioner is still ready to pay the amount of Rs.21,000/= p.m. as license fee p.m. By the interim order passed by this Court status-quo was ordered and the Corporation was directed not to handover premises to third party without prior permission of this Court keeping in view the fact that the petitioner is still ready to take the premises on payment of license fee of Rs.21,000/= p.m. Taking into consideration the fact that both parties were at fault and committed wrong, the respondent has suffered six months' revenue, the amount of loss of six months can be suffered by both the parties proportionately and the learned counsel for the

petitioner states that the petitioner is ready to pay three months' license fee amounting to Rs.63,000/= and the rest of the amount will have to be suffered by the Corporation.

10. In view of the above and in the interest of justice, it is directed that the petitioner will pay the amount of Rs.63,000/= towards loss sustained by the respondent - Corporation in three installments, with the regular license fee of Rs.21,000/= p.m. Accordingly the petitioner will pay the amount of Rs.42,000/= continuously for three months i.e. February, March and April 2003. Thereafter the petitioner will deposit the amount of Rs.21,000/= as license fees p.m. regularly with the respondent till the next fresh tender is published by the Corporation for the disputed premises and contract is settled with any of the bidders.

11. The learned counsel for the petitioner states that he will pay the amount of Rs.42,000/= within a week. As soon as the amount of Rs.42,000/= is paid by the petitioner to the respondent - Corporation, the respondent- Corporation is hereby directed to handover the possession of the canteen to the petitioner within 3 (three) days and the petitioner will continue to deposit Rs.42,000/= in the month of March and April, 2003 and thereafter the petitioner will pay only amount of Rs.21,000/= p.m. regularly, till the next fresh tender is published by the respondent - Corporation for the license of the disputed premises and contract is finalized and license is given to any of the bidders.

12. With the aforesaid directions, the petition is allowed. The notice/order dated 29.07.2002 is hereby quashed and set aside. Rule made absolute to the above extent accordingly with no order as to costs. Direct service permitted.

Sd/-

[KUNDAN SINGH, J]

*****

'Bhavesh'